

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
MARITIME COMMUNICATIONS/ LAND MOBILE, LLC, DIP (“MCLM”))	WT Docket No. 13-85
Application to Assign Licenses to Choctaw Holdings, LLC)	FCC File No. 0005552500
)	
MCLM Applications to Modify and to Partially Assign License for Station WQGF318 to Southern California Regional Rail Authority)	FCC File Nos. 0004153701 and 0004144435
)	
Application for New Automated Maritime Telecommunications System Stations)	FCC File No. 0002303355
)	
Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing)	EB Docket No. 11-71
)	File No. EB-09-IH-1751
)	FCC File Nos. 0004030479, 0004144435, 0004193028, 0004193328, 0004354053, 0004309872, 0004310060, 0004314903, 0004315013, 0004430505, 00044317199, 0004419431, 0004422320, 0004422329, 0004507921, 0004153701, 0004526264, 0004636537, and 0004604962

PETITION FOR RECONSIDERATION OF WARREN HAVENS
OF FCC 16-172 BASED ON NEW FACTS
SUBMITTED IN ADVANCE
WITH
REQUEST TO ACCEPT

To: The Secretary
Attn.: The Commission

Warren Havens, and
Polaris PNT PBC
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January 17, 2017

INTRODUCTION

This filing is described in the concurrently filed Havens Petition for Reconsideration (on existing facts) called Havens “Petition-2.” This filing is called Havens “Petition-1.” These and other defined terms used in Petition-2 may be used herein. Also, herein (and in Petition-2) by “new facts,” Havens includes any related new law regarding the new facts combined with the existing facts.

The parts of the Preface in Petition-2 related to this Petition-1 and are referenced and incorporated herein.

NEW FACTS, THE RELEVANT PLEADING CYCLE FOR THE NEW FACTS REMAINS OPEN, AND RECONSIDERATION AND A HEARING IS WARRANTED

As discussed in Petition-2, MCLM submitted applications to renew its geographic licenses subject of the Order after the Order was issued, along with a request to extend the construction deadline. Those were placed on 30-day public notice, and this period has not yet expired.

Havens intends to submit a petition or petitions to deny, and other filings, regarding these applications in which he will show, based on sound evidence already in FCC records of the proceedings underlying the subject Order, that MCLM based these applications on false, fraudulent and frivolous statements, to attempt to unlawfully keep the licenses. This follows and involves similar wrongdoing as MCLM employed to obtain the licenses in the first place, in Auction 61 and sustain them in the first ten-year term.

These MCLM statements in these applications include, as noted in Petition-2, that its site-bases stations and licenses were validly constructed and in valid operation and service after Auction 61 for long periods of time and over much of the nation. Appendix 1 attached hereto

contains some the MCLM statements in these applications that contain false, fraudulent and frivolous statements of decisional importance to these applications, that will be shown as false, fraudulent and frivolous in the Havens challenge filings noted above.

These false, fraudulent and frivolous statements and applications involve new facts of a similar nature, and that go to the same qualification/ disqualification issues, as the facts and issues in the proceedings to date that resulted in the Order.

Unless these licenses are renewed, after considering the challenge filings by Havens and filings of any other party, and FCC examination and decision, the relief in the Order will be moot. Thus, these should be determined first, and thereafter challenges to the Order based on existing facts, as submitted in Petition-2, should be permitted and processed.

After Havens submits the just noted challenge filings regarding these MCLM applications and the pleading cycle has closed, Havens will amend this Petition-1 with relevant information.

Also, for reasons given in Petition-2, a hearing will be warranted regarding these applications and the new facts involved, along with a hearing on issues raised regarding the Order under the existing facts.

REQUEST TO ACCEPT
(IF NEEDED)

As Petition-2 explains, Petition-2 is conditional and protective in nature and should not be due until after this Petition-1 is completed. As to this Petition-1, by its substance above, it precedes the time when it can be completed, which is after the end of the pleading cycle for challenges to the MCLM renewal and extension applications at issue.

However, if Petition-1 and Petition-2 are nevertheless deemed late, if deemed due by the end of January 17, 2017 (they are submitted after that time but prior to the FCC opening for

business on January 18, 2017), then the following is submitted as good cause to accept these two filings as timely and to process them.

First, prior to the end of the evening on January 17, 2017, after Havens, the undersigned, completed the cover sheet on ECSF in docket 13-85, Havens attempted to upload these two Petitions a number of times, with the drag-and-drop method and the file-selection method. However, for reasons currently not known, these would not upload. Havens will contact ECSF technical staff to determine if they have logs for the attempted uploads and submissions, and if they can determine what caused the problem just described.¹ If either or both of these are determined, then Havens intend to supplement this Request to Accept.

In addition, in case it cannot be determined that a problem in the ECFS system caused this inability of Havens to complete the filing of the two Petitions on January 17, then Havens submits the rest of this Request to Accept:

Havens alleges that the violations described below, primarily of FCC service and ex parte rules, and related sections of the federal Administrative Procedures Act (“APA”), by MCLM and others in the proceedings leading to the Order, are good cause.

(i) Apparently in relation to the Receivership of Susan Uecker, described in the Havens “Petition-2,” MCLM and others ceased including Havens as a party to receive service of filings, and communications, in the proceedings in which the subject MCLM licenses and actions were and remain challenged by Havens and that lead to the Order. However, as the Order itself states, and as the Commission and Wireless Bureau have recognized from the start of the proceedings, Havens remained a party at all times, and had to be served copies relating to these challenged MCLM licenses and actions. Not doing so, for well over a year at least, is also a violation of

¹ Havens used a security VPN, the latest Apple Mac OS (Sierra), and a recent standard Browser version. However, these should not have caused this problem, unless the ECFS system rejected the VPN as some systems do. If so, the system should give a notice, and no warning was given.

FCC and APA ex parte rules. A party who violates the ex parte rules may be subject to losing its position in the proceeding(s) involved. These violations in fact caused Havens, and should be taken as intending to cause Havens (including since service is simple to perform, and because Havens was the active and effective challenger to MCLM), lack of information he was entitled to receive in proceedings underlying the Order (and to this day, some of the information may be concealed) needed to research and prepare Petition-1 and Petition-2, substantial time delay, and other serious prejudice. This prejudice fully justifies grant of this Request to Accept, as the minimum, initial relief for these violations (if the Request needs to be granted in the first place: see above).

(ii) FCC staff also itself erred in not causing MCLM and others to follow the above-noted service and ex-parte rule requirements in this critical, long time period in these proceedings.²

(iii) In addition, further extreme prejudice has been caused to Havens, including to his attempts to research and submit Petition-1 and Petition-2, by the FCC's unwarranted failure to decide, in close to two years already, upon the Havens appeal of the of the *interlocutory* order, FCC 15M-14, issued by FCC ALJ Richard Sippel.³ This failure has led, among other types of

² Havens also alleges here that FCC staff further erred, in this time period, by communications with the Receiver, concealed to Havens, (i) shown in responses to Havens FOIA requests submitted to the FCC, and (ii) as shown by the Receiver's legal counsel's statements to the Receivership Court in attempts to obtain a *State* Court bar of Havens' *Federal* FOIA rights (which Havens reported to the FCC Office of General Counsel) concerning Havens FOIA requests submitted to the FCC that related to the Receivership, to parties in the Receivership court action, and to parties in the proceedings leading to this Order. This concealed FCC communication is contrary to the FOIA, ex parte rules, and the Privacy Act. It became an issue in substantial legal proceedings and hearing in the Receivership court action (shown in the public records of the action) that cost prejudice Havens by major expenditures of time and money and in other ways. If needed to grant this Request, or as a supplement to this Request, Havens may submit documentation of these matters from court and FCC records already in the public domain.

³ The appeal involved the initial interlocutory appeal filings, the special 25-page supplement under FCC permission, a petition for reconsideration, and other filings, all submitted in docket 11-71, some of which are also submitted on docket 13-83.

prejudice, to Havens not being served copies of filings and communications in docket 11-71 which relate to some of the issues Havens raises in Petition-1 and Petition-2.⁴

Where both the adverse party and FCC staff engaged in, as here, such prejudicial actions, the FCC must grant relief as requested herein, and in accord with relevant FCC and DC Circuit Court precedent.

If deemed late, Petition-1 and Petition-2 should be accepted and processed in the public interest in accord with FCC rule §1.106(c)(2) and under case precedents including:

(i) *Graceba v FCC* (1997, App DC) 325 US App DC 135, 115 F3d 1038, dismd (1999, App DC), subsequent app (2000, App DC) 2000 US App LEXIS 38660 (time limit on petitions for reconsideration has never been construed to be absolute bar on reconsideration of issues raised after 30 days, and both constitutional and statutory challenges by reconsideration may be permitted—and here, Havens raises both constitutional and statutory challenges);

(ii) *Gardner v FCC* (1976, App DC) 174 US App DC 234, 530 F2d 1086 (FCC abused discretion in rejecting as untimely a petition for rehearing where petitioner did not receive personal notice of adverse agency action to which he was entitled, and where 47 USCS § 405 conferred standing on petitioner to petition for rehearing: fairness required that the 30 day filing be waived or extended where personal notice is not given within reasonable time, or where it is not given at all—and here, a like inequitable prejudicial situation applies as summarized above;

⁴ In addition, it has been a cause of the Receivership of Susan Uecker (a receivership *pendent lite*, to maintain the status quo, as the Court has described) noted in Petition-2. And this Receivership has diverted Havens time and resources otherwise available to sustain his challenges to MCLM, including by petitions for reconsideration of the subject Order. (The major extent of that diversion is shown in the public court pleadings in the receivership court action, which both the FCC and MCLM are well aware of, and are often subjects of in the pleadings and oral arguments in that action.)

(iii) And *In re Applications of Linda Crook*, 3 FCC Rcd 1867 (1988) (petitioner submitted “new facts” raising serious questions pertaining to a licensee’s basic qualifications in petition for reconsideration—and here, this also applies, adding weight to ‘(i)’ and ‘(ii)’ above.

Also, Petition-1 and Petition-2 should be accepted and processed to be equitable, where the FCC has accepted and processed, and found in part persuasive, late filed submissions in support of the MCLM petition for reconsideration granted for the most part in the Order. When those were accepted and processed, so too should the subject Havens Petition-1 and Petition-1, to be equitable.

In addition, Petition-1 and Petition-2 should be accepted and processed for a more full and complete records in the public interest, (i) in accord with Congress’s purpose in §309 (d) of the Communications Act, and the related §405, to provide for challenges by parties with Article III interest and standing to licensing applications and orders since that adversarial system is needed both for Due Process to protect the challenger’s private rights at issue, and to assist FCC staff in obtaining relevant facts and law to better decide on the licensing applications and orders, and (ii) in accord with the FCC establishing docket 13-85 for comments from any person due to the high public interest issues involved.

Further, as the Certificates of Service for Petition-1 and Petition-2 show, Havens provides email copies, as well as copies by US mail. Thus, the party recipients will receive these filings by the start of FCC business on January 18, 2017 (no practical loss in time versus the filings being submitted to the FCC after close of business and before midnight on January 17, 2017). The electronic filings will also be submitted to the FCC prior to the start of business on January 18 and thus pose no practical loss of time to FCC staff, either.

CONCLUSIONS

For reasons given: this Petition-1, along with Petition-2, should be accepted and processed; the processing method and timing proposed should be granted (first completion of

this Petition-2 after the noted pleading cycle is closed, and then completion and resubmission of Petition-1), and then the relief requested in the two Petitions should be granted including the hearing required under the Communications Act, the APA, and Fifth Amendment Due Process, to the degree the admissions of MLM are not found already sufficient (which Petitioners submit they are, as to both the geographic and the site based licenses).

The alternative relief indicated in the Preface in Petition-2 will be submitted after this Petition-1 can be completed, as described above.

As noted above, attached hereto is Appendix 1.

Respectfully submitted,

/s/

Warren Havens

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Polaris PNT, PBC
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Declaration

I declare under penalty of perjury that the facts presented in this filing, known to me, are true and correct.

/s/

Warren Havens
January 17, 2017

Certificate of Service

A certificate of service will be separately filed.

APPENDIX 1

The following are among the false, fraudulent and frivolous statements by MCLM in its applications to renew and seek a construction-extensions for its geographic AMTS licenses submitted at the end of December 2016, after the subject Order was released. These are references in Havens Petition-1 above, as well as in Havens Petition-2.

From the MCLM:

“REQUEST FOR WAIVER OF SUBSTANTIAL SERVICE REQUIREMENT”

By a separate exhibit to this application, Maritime has presented a showing that it has provided substantial service in compliance with Section 80.49(a)(3) of the Commission’s Rules and Regulations.

* * * *

7....As Maritime and Choctaw explained, grant of Second Thursday relief will not benefit Mr. DePriest, while denial of Second Thursday relief would leave innocent creditors with no recourse.

* * * *

10. The record thus far developed in EB Docket No. 11-71 and in the bankruptcy proceeding shows that Maritime’s financial difficulties were primarily the result, inter alia, of major changes in the market for maritime communications services, as well as heavy burdens imposed on it by the incessant litigation from **Warren Havens** and his entities....

* * * *

Footnote 19. See, e.g., Maritime’s Proposed Findings of Fact on Issue G, filed in EB Docket No. 11-71 on April 9, 2015. A detailed account is presented in the Deposition of Mr. John Reardon, conducted Sept. 28, 2012, in EB Docket No. 11-71. While the discussion focused primarily on the incumbent or “site-based” licenses, it is clear from the record that Maritime’s activities in this regard were also aimed at implementing the geographic licenses.

Note: this filing, alleging that actions by **Havens** were a cause of MCLM failure to meet the public interest construction standard, was not served on Havens, nor were other MCLM filings in the proceedings underlying the subject Order against Havens interests and petitions. These and related violations are described in Havens Petition-1 and Petition-2.

From the MCLM:

“PUBLIC INTEREST STATEMENT”

B. Substantial Service Showing.

* * * *

Maritime respectfully submits that, based on the showing below, it has provided substantial service in each of the geographic areas sufficient to meet the above-quoted standard. However, should the Commission find this showing lacking in any respect, by a separate exhibit Maritime requests a waiver of the performance deadline.

Maritime has satisfied the substantial service requirement in three ways: (1) operating and providing traditional maritime and land mobile services via constructed incumbent facilities throughout the geographic area;....⁵

1. Waterways and Land Mobile Services Operations

When Maritime first obtained the above-reference geographic authorizations, it was already providing AMTS service via constructed and operating facilities in multiple locations throughout each of these markets. Maritime acquired the incumbent AMTS licenses of Mobex Network Services, LLC in a transaction that closed on December 30, 2005.⁸ This included a system, known as Watercom, that was serving barges and other vessels along the Mississippi and Ohio Rivers, and their tributaries, as well as along the coastline of the Gulf of Mexico. In addition, Maritime acquired Mobex's commercial land mobile radio systems which provided two-way land mobile radio services in other parts of the country. These stations were operating and providing AMTS service, in the AMTS geographic areas, and on the AMTS frequency band specified in the above-referenced licenses. That the service was provided via incumbent stations with different call signs is a mere technicality of no real significance.⁹ The crucial fact is that Maritime

⁵ This text alleges service in the *areas* of the geographic licenses, but not under the geographic licenses. The reason for this language is shown in the history of MCLM before the FCC, including that MCLM continually asserted false site-based licensed stations during the course of holding its the geographic licenses. As MCLM explained to the FCC in at least one filing: it had concern that it would lose the geographic licenses, and thus did not want turn in the site-based licenses in the same geographic areas. Nor, for the long years involved, did MCLM report construction and operations under its geographic licenses using the alleged operating site-based licenses' stations on the same spectrum in the same areas. Why not - it would easy to do so, and would have served to protect the geographic licenses? The reasons are partially obvious (the site based stations did not exist or were token, and without records to support their timely construction and valid operation), and in any case will be presented in the Havens challenge filings to these MCLM applications. MCLM provided no proof of timely construction and actual operation of the vast majority of all of its site-based stations and licenses, including in proceeding 11-71 and in the applications to renew various site base stations before the Wireless Bureau, and MCLM eventually admitted in proceeding 11-71 that these stations were automatically terminated due to failure to produce such proof. This MCLM lack of proof, and the MCLM assertion of destruction of the records these stations*/ should be taken as admissions that the stations were not timely constructed and also not in valid operations. */ This assertion is in a Declaration under penalty of perjury, arranged by counsel of MCLM, signed by David Predmore with language provided by and under the direction of John Reardon, the senior officer in Mobex and MCLM and a manager in Choctaw, as Predmore testified to in a court deposition arranged by Havens. This was submitted by Havens in proceeding 11-71.

was providing AMTS service via constructed and operating facilities throughout the four geographic areas. Set forth below is a market-by-market summary of these existing operations.

* * * *

Footnote 9. The geographic authorizations entirely duplicated and subsumed the authority granted by the incumbent licenses. Maritime could have, and eventually did, cancel each these incumbent licenses with no loss of authorized area or spectrum. The geographic licenses alone were sufficient to authorize the incumbent station operations.

* * * *

...For as long as it was financially able, however, these facilities remained constructed and operational. Of the facilities listed above, all but three remained constructed and operational until at least 2010.

2....

...In this case, however, as discussed Section B.1, above, Maritime in fact did provide AMTS services via constructed and operating facilities, in the licensed service area and on the licensed spectrum during the license term.

* * * *

3....

* * * *

Pinnacle Wireless USA, Inc. For the last ten years, Pinnacle has leased AMTS spectrum from Maritime which it uses in connection with a voice and data system, including public safety support, used by the New Jersey Turnpike Authority. This system covers all of the New Jersey Turnpike and the Garden State Parkway, major highways carrying billions of cars and trucks each year.¹³ Pinnacle also used leased Maritime spectrum to support communications for the New Jersey Sports and Entertainment Authority's Meadowlands facility, which hosts over a billion visitors each year to MetLife Stadium and other venues.

* * * *

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